



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2612-00

22 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Messrs. Dunn and McPartlin and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 13 September 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 14 September 1993 for four years at age 23. The record reflects on 16 September 1993, Petitioner underwent a drug/alcohol dependency screening and was determined not to be dependent on drugs or alcohol.

d. On 20 September 1993 a Navy drug laboratory reported that Petitioner's urine sample on 15 September 1993 had tested positive for cocaine.

e. On 21 September 1993 the discharge authority directed that Petitioner's enlistment be voided. He was so separated by reason of "defective enlistment-lack of jurisdiction" on 24 September 1993 and assigned an RE-4 reenlistment code.

f. The DD Form 214 issued on Petitioner's separation has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "Entered: 93SEP14 Released: 93SEP24 Enlistment Voided. This release does not constitute a discharge and a discharge certificate has not been issued."

g. The Board is aware that Federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent within 72 hours of reporting for an initial period of active duty.

h. The Board is also aware that an individual can be separated due to an erroneous enlistment if there is a condition which, had it been known prior to enlistment, would have prevented enlistment. Use of cocaine within 12 months of enlistment is disqualifying. The regulation requires the assignment of an RE-4 reenlistment code to individuals discharged by reason of "erroneous enlistment-drug abuse." Individuals separated within 180 days of active service receive an uncharacterized entry level separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board notes that since Petitioner was not dependent on drugs, his enlistment could not be voided under the law. He should have been more appropriately issued an uncharacterized entry level separation by reason of

erroneous enlistment due to drug abuse. Therefore, the Board concludes that Petitioner's enlistment was improperly voided. Accordingly, the record should be corrected to show that he received an uncharacterized entry level separation by reason of erroneous enlistment.

Concerning the reenlistment code, the Board noted that regulations require the assignment of an RE-4 reenlistment code when an individual is separated by reason of erroneous enlistment due to drug abuse. Accordingly, the Board concluded that the reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by issued him a new DD Form 214 which reflects that he served on active duty from 14 September 1993 to 24 September 1993 and on the latter date he was discharged with an uncharacterized entry level separation by reason of erroneous enlistment due to drug abuse.

b. That no other relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


d. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

A handwritten signature in cursive script, appearing to read "Robert J. Fishman".

For W. DEAN PFEIFFER
Executive Director